



BILLING CODE: 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2014-0023]

Gypsy Moth Generally Infested Areas; Additions in Minnesota, Virginia, West Virginia, and Wisconsin

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the gypsy moth regulations by adding areas in Minnesota, Virginia, West Virginia, and Wisconsin to the list of generally infested areas based on the detection of infestations of gypsy moth in those areas. As a result of this action, the interstate movement of regulated articles from those areas is restricted. This action is necessary to prevent the artificial spread of the gypsy moth to noninfested areas of the United States.

DATES: This interim rule is effective [Insert date of publication in the Federal Register]. We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0023>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2014-0023, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0023> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Chaloux, National Policy Manager, Emerald Ash Borer Program and Gypsy Moth Program, Plant Protection and Quarantine, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737; (301) 851-2064.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, Lymantria dispar (Linnaeus), is a destructive pest of forest, shade, and commercial trees such as nursery stock and Christmas trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45-12 and referred to below as the regulations) restrict the interstate movement of regulated articles from generally infested areas to prevent the artificial spread of the gypsy moth.

In accordance with § 301.45-2 of the regulations, generally infested areas are, with certain exceptions, those States or portions of States in which a gypsy moth general infestation

has been found by an inspector, or each portion of a State that the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if: (1) The State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of such articles; and (2) the designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

Section 301.45-3 of the regulations lists generally infested areas. In this rule, we are amending § 301.45-3(a) by adding the following areas to the list of generally infested areas: Cook and Lake Counties in Minnesota; Tazewell County in Virginia; McDowell, Mercer, Raleigh, Summers, and Wyoming Counties in West Virginia; and Iowa County in Wisconsin. As a result of this rule, the interstate movement of regulated articles from these areas will be restricted.

On December 4, 2012, January 2, 2013, and August 21, 2014, respectively, the Animal and Plant Health Inspection Service (APHIS) issued Federal Orders to quarantine the counties listed above for gypsy moth in response to confirmed infestations in those counties. This was done in cooperation with the respective State officials. By adding the above-named counties in Minnesota, Virginia, West Virginia, and Wisconsin to the list of generally infested areas, this rule will help prevent the artificial spread of the gypsy moth to noninfested areas of the United States.

We are also removing the requirement in § 301.45-4 that regulated articles originating outside of any generally infested area and moving interstate directly through any generally

infested area must be covered to prevent access by the gypsy moth in any of its life stages. That requirement was put in place out of an abundance of caution when we had a more limited understanding of the biology and behavior of the gypsy moth. In the intervening time, advances in our understanding of the pest have led APHIS to conclude that the requirement does not provide additional protection from the spread of gypsy moth during shipment. We are therefore removing a requirement that we no longer view as necessary, thus lightening the regulatory burden on shippers of regulated articles.

Emergency Action

This rulemaking is necessary on an emergency basis because of the possibility that the gypsy moth could be artificially spread to noninfested areas of the United States, where it could cause economic losses due to the defoliation of susceptible forest and shade trees. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the Federal Register.

We will consider comments we receive during the comment period for this interim rule (see DATES above). After the comment period closes, we will publish another document in the Federal Register. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. The full

analysis may be viewed on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov) or obtained from the person listed under FOR FURTHER INFORMATION CONTACT.

We are amending the gypsy moth regulations by adding areas in Minnesota, Virginia, West Virginia, and Wisconsin to the list of generally infested areas based on detected infestations of gypsy moth. As a result of this action, the interstate movement of regulated articles from those areas is restricted.

This interim rule will affect businesses such as nurseries, Christmas tree farms, and timber companies that are located within the newly quarantined areas and that transport regulated articles interstate. Agricultural entities in the newly quarantined areas are predominantly, if not entirely, small entities.

We do not anticipate any significant economic impacts resulting from this action. APHIS works closely with State officials through quarantines and regulatory programs to limit the artificial spread of gypsy moth beyond infested areas, and stakeholders support these efforts. Many of the potentially affected entities are already operating under compliance agreements. Businesses with compliance agreements can self-inspect regulated articles moved from quarantined areas. Businesses without compliance agreements can have inspection and certification services provided by State or Federal officials at no cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.45-3, paragraph (a) is amended as follows:

a. By adding, in alphabetical order, an entry for Minnesota.

b. Under the heading Virginia, by adding an entry for Tazewell County in alphabetical order.

c. Under the heading West Virginia, by adding entries for McDowell County, Mercer County, Raleigh County, Summers County, and Wyoming County in alphabetical order.

d. Under the heading Wisconsin, by adding an entry for Iowa County in alphabetical order.

The additions read as follows:

§ 301.45-3 Generally infested areas.

(a) * * *

MINNESOTA

Cook County. The entire county.

Lake County. The entire county.

* * * * *

VIRGINIA

* * * * *

Tazewell County. The entire county.

* * * * *

WEST VIRGINIA

* * * * *

McDowell County. The entire county.

Mercer County. The entire county.

* * * * *

Raleigh County. The entire county.

* * * * *

Summers County. The entire county.

* * * * *

Wyoming County. The entire county.

WISCONSIN

* * * * *

Iowa County. The entire county.

* * * * *

§ 301.45-4 [Amended]

3. In § 301.45-4, paragraph (b) is amended by removing the last sentence of the paragraph.

Done in Washington, DC, this 6th day of March 2015 .

Kevin Shea

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015-05661 Filed: 3/11/2015 08:45 am; Publication Date: 3/12/2015]